

YOUR MEDIATION DAY

What is mediation?

Mediation is a confidential problem-solving process, which relies on a third party, a Mediator, to facilitate effective communication while working toward a mutually agreeable solution.

Mediation is voluntary and available to parents and public education agencies to resolve disputes before or after a due process hearing has been requested or for other disputes that may arise in the relationship between the family and school.

Some issues do not lend themselves to mediation, such as points of law, issues of compliance, or questions regarding the determination of a specific disability.

Who are the Mediators?

Mediators are trained and experienced professionals, provided at no expense to the parents or public education agencies. Mediators are neutral. Their role is to assist the parties in coming to a resolution that is acceptable and meets the needs of the parties involved. They are selected on a rotational basis. The Mediator will not participate in due process hearings or future legal proceedings if resolution is not reached. Neither will the Mediator act as an enforcer of a mediation agreement. Mediators are not authorized to give legal advice or represent or advocate for either party.

Who attends the mediation session?

There will generally be one mediator. The parents and the school or district may each have up to three people in attendance. At the discretion of the Mediator, additional participants may be approved. There must be representation for each party with the authority to commit necessary resources and fulfill all terms of the agreement reached. If either party intends to have legal representation, prior notice must be provided. Family advisors or advocates may attend however, the parent(s) will be asked to speak for him/her/themselves. Everyone will know in advance who will be participating in mediation.

How long does mediation take?

Since every dispute is different, and some are more complex than others, there is no set time for completing mediation. The session may last up to eight hours and it is recommended that participants set aside the entire day.

Where is mediation held?

Sessions are held at a location reasonably convenient and agreeable to both parties.

How to prepare for mediation?

Prior to mediation, gather and organize relevant documents that you might want to refer to in the session. The Mediator may want to talk by telephone to each of the parties in advance of the mediation to briefly discuss the dispute and resolution priorities. Recognize that the position you have taken and what you have tried before mediation did not resolve your concerns; consider different, realistic options that would be acceptable in order to reach an agreement.

What to expect at the mediation session?

Introduction and Explanation – The Mediator may have held a pre-mediation call with each party to briefly discuss the dispute and the mediation process. In all instances the mediation session will begin with a review of the “Agreement to Mediate” document, which includes ground rules, the process, and confidentiality requirements. Since confidentiality is critical to the success of mediation, sessions may not be recorded, and individual notes will be destroyed at the conclusion of mediation.

Joint Sessions and Separate Caucuses – The Mediator will give each party the opportunity to discuss the concerns that should be addressed in a resolution. These discussions may occur in a joint session with all parties or in a separate, private caucus with the Mediator. The Mediator will ask questions, help to clarify the issues, and use other techniques to ensure that there is a shared understanding of the concerns that need to be addressed in an agreement. Information discussed during separate caucuses will only be shared with the other party with consent. There may be several caucuses and joint sessions for the purpose of exploring options for agreement.

Recesses – The Mediator or either party may call a recess. This can be a good time to reflect on the discussion and consider next steps.

Conclusion of the Session – When an agreement is reached, the Mediator may assist the parties in expressing the settlement terms. The Mediator may then document the terms in an agreement for both parties and the Mediator to sign. If attorneys are present their customary settlement agreement may be used. In the event an agreement is not reached, the parties will sign a document to confirm that settlement efforts were not successful.

Evaluation – At the conclusion of the mediation the Mediator will provide the parties with a brief evaluation, along with a postage-paid return envelope. The parties are encouraged to complete the evaluation and provide constructive feedback so that the mediation process can be improved. All information will be confidential.

